

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE**

EXCALIBUR CHARTER SCHOOL, INC.

and

Case No. 28-CA-23039

NATHANIEL WICKE, An Individual

ORDER

Counsel for the General Counsel filed a motion dated November 18, 2010 entitled Motion to Reopen the Record for Admission of Exhibits, For the Rejection of Exhibits Offered by Respondent After the Close of the Hearing, and for an Extension of Time to File Post-Hearing Briefs. Counsel for the Respondent filed a Reply to this Motion.

Prior to the closing the hearing herein on October 19, 2010, Counsel for the General Counsel objected to my closing the hearing because she had not been provided with some of the documents that she had subpoenaed from the Respondent. Although I closed the hearing on that day, I left the record open for one purpose, for the Respondent to provide the Counsel for the General Counsel with certain documents that were subpoenaed, but not provided, by November 29, 2010. The documents to be provided were:

The Power Point Slide Show presented to employees. (Tr. 142-143)

The 2009 Annual Audit of the Respondent. (Tr. 241)

The Charter Contract. (Tr. 240-241)

Any agreements that the Respondent has with the State of Arizona authorizing it to act as a charter school. (Tr. 247)

The amount of monies received from the State of Arizona and from the Federal Government for each year of operation. (Tr. 248)

The amount of private contributions made to the Respondent in 2009. (Tr. 248)

By letter from Counsel for the Respondent dated November 2, 2010, I received twenty eight proposed exhibits, together with some other information. Items numbered from 24 through 28 appear to be responsive to Counsel for the General Counsel's subpoena and my order at the conclusion of the hearing. Prior to the conclusion of the hearing, I gave leave to Counsel for the General Counsel to offer into evidence any of the documents provided by the Respondent after the conclusion of the hearing that she felt were relevant to the issues herein. Such leave was not given to the Respondent, so its request that these twenty eight proposed exhibits be made Respondent's exhibits is denied. Counsel for the General Counsel in her motion moved for the introduction into evidence as General Counsel's Exhibits 12 through 16, five documents that were part of the twenty eight proposed exhibits that were received after the close of the hearing, pursuant to Counsel for the General Counsel's subpoena, and my order at the close of the hearing, and those documents will be received into evidence as General Counsel's Exhibits 12,


13, 14, 15 and 16. In addition, Counsel for the General Counsel will state what relevant subpoenaed documents, if any, the Respondent has failed to turn over and what remedy, if any, she is requesting for this failure to comply with the subpoena.

5 Counsel for the General Counsel also objects to the Respondent's refusal to stipulate to the source of "other revenues" or to stipulate that "other revenues" are not state or federal money. Absent such a stipulation, the Respondent is ordered to produce all documents evidencing the source of "other revenues" as reflected in its 2008 IRS Form 990 and its 2009 audit.

10 Counsel for the General Counsel also moves to reopen the record to allow for witnesses to testify and "place into proper context" the late-produced documents that Counsel for the General Counsel has moved into evidence. That motion is denied, at this time. If, after reading the transcript and examining the exhibits, I determine that additional testimony is needed, I will
15 issue an appropriate order *sua sponte*.

Finally, because of the delay caused by Respondent's failure to turn over the subpoenaed documents prior to the close of the hearing, the date that briefs are due is extended to January 10, 2011.

20 Dated: December 1, 2010
New York, New York


Joel P. Biblowitz
25 Administrative Law Judge

MODE = MEMORY TRANSMISSION

START=DEC-01 11:42

END=DEC-01 11:44

FILE NO.=215

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Date: 12/1/10

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Comments: Re: Excalibur Charter School
Case No. 28-CA-23039